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13 NOBEL BIO CARE USA LLC,
NOBEL BIO CARE SERVICES AG,
14 and NOBEL BIO CARE AB

15 **IN THE UNITED STATES DISTRICT COURT**
16 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

17 SPITZ TECHNOLOGIES
18 CORPORATION,

19 Plaintiff,

20 v.

21 NOBEL BIO CARE USA, LLC,
22 NOBEL BIO CARE SERVICES AG,
23 and NOBEL BIO CARE AB

24 Defendants.

25 AND RELATED COUNTER-ACTION

) Case No. 8:17-cv-00660-JVS-JCG

) Hon. James V. Selna
) Magistrate Judge Jay C. Gandhi

) **STIPULATED PROTECTIVE**
) **ORDER**

1 **1. A. PURPOSES AND LIMITATIONS**

2 Discovery in this action is likely to involve production of confidential,
3 proprietary, or private information for which special protection from public
4 disclosure and from use for any purpose other than prosecuting this litigation
5 may be warranted. Accordingly, the parties hereby stipulate to and petition the
6 Court to enter the following Stipulated Protective Order. The parties
7 acknowledge that this Order does not confer blanket protections on all
8 disclosures or responses to discovery and that the protection it affords from
9 public disclosure and use extends only to the limited information or items that
10 are entitled to confidential treatment under the applicable legal principles. The
11 parties further acknowledge, as set forth in Section 12.3, below, that this
12 Stipulated Protective Order does not entitle them to file confidential information
13 under seal; Civil Local Rule 79-5 sets forth the procedures that must be
14 followed and the standards that will be applied when a party seeks permission
15 from the court to file material under seal.

16 **B. GOOD CAUSE STATEMENT**

17 This action is likely to involve trade secrets, customer and pricing lists
18 and other valuable research, development, commercial, financial, technical
19 and/or proprietary information for which special protection from public
20 disclosure and from use for any purpose other than prosecution of this action is
21 warranted. Such confidential and proprietary materials and information consist
22 of, among other things, confidential business or financial information,
23 information regarding confidential business practices, or other confidential
24 research, development, or commercial information (including information
25 implicating privacy rights of third parties), information otherwise generally
26 unavailable to the public, and information the disclosure of which is likely to
27 cause harm to the competitive position of the entity from which the information
28 was obtained, or which may be privileged or otherwise protected from

disclosure under state or federal statutes, court rules, case decisions, or common law. Accordingly, to expedite the flow of information, to facilitate the prompt resolution of disputes over confidentiality of discovery materials, to adequately protect information the parties are entitled to keep confidential, to ensure that the parties are permitted reasonable necessary uses of such material in preparation for and in the conduct of trial, to address their handling at the end of the litigation, and serve the ends of justice, a protective order for such information is justified in this matter. It is the intent of the parties that information will not be designated as confidential for tactical reasons and that nothing be so designated without a good faith belief that it has been maintained in a confidential, non-public manner, and there is good cause why it should not be part of the public record of this case.

2. DEFINITIONS

2.1 Action: C.D. Cal. Case No. 8:17-cv-00660-JVX-JCG.

2.2 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.3 “CONFIDENTIAL BUSINESS INFORMATION”: information that has not been made public; information that includes trade secret or other confidential research, development, or commercial information the disclosure of which could cause harm to the business operations or the competitive commercial position of the Designating Party or provide improper business or commercial advantage to others; or information that is protected by a right of privacy under federal or state law or any other applicable privilege or right related to confidentiality or privacy.

2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their support staff).

2.5 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery

1 as “CONFIDENTIAL BUSINESS INFORMATION.”

2 2.6 Disclosure or Discovery Material: all items or information,
3 regardless of the medium or manner in which it is generated, stored, or
4 maintained (including, among other things, testimony, transcripts, and tangible
5 things), that are produced or generated in disclosures or responses to discovery
6 in this matter.

7 2.7 Expert: a person with specialized knowledge or experience in a
8 matter pertinent to the litigation who has been retained by a Party or its counsel
9 to serve as an expert witness or as a consultant in this Action, and includes
10 support staff.

11 2.8 House Counsel: in-house attorneys who provide legal advice to a
12 party to this Action. House Counsel does not include Outside Counsel of Record
13 or any other outside counsel.

14 2.9 Non-Party: any natural person, partnership, corporation,
15 association, or other legal entity not named as a Party to this action.

16 2.10 Outside Counsel of Record: attorneys who are not employees of a
17 party to this Action but are retained to represent or advise a party to this Action
18 and have appeared in this Action on behalf of that party or are affiliated with a
19 law firm which has appeared on behalf of that party, and includes support staff.

20 2.11 Party: any party to this Action, including all of its officers,
21 directors, employees, consultants, retained experts, and Outside Counsel of
22 Record (and their support staffs).

23 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
24 Discovery Material in this Action.

25 2.13 Professional Vendors: persons or entities that provide litigation
26 support services (e.g., photocopying, videotaping, translating, preparing exhibits
27 or demonstrations, and organizing, storing, or retrieving data in any form or
28 medium) and their employees and subcontractors.

1 2.14 Protected Material: any Disclosure or Discovery Material that is
2 designated as “CONFIDENTIAL BUSINESS INFORMATION.”

3 2.15 Receiving Party: a Party that receives Disclosure or Discovery
4 Material from a Producing Party.

5 **3. SCOPE**

6 The protections conferred by this Stipulation and Order cover not only
7 Protected Material (as defined above), but also (1) any information copied or
8 extracted from Protected Material; (2) all copies, excerpts, summaries, or
9 compilations of Protected Material; and (3) any testimony, conversations, or
10 presentations by Parties or their Counsel that might reveal Protected Material.

11 Any use of Protected Material at trial shall be governed by the orders of
12 the trial judge. This Order does not govern the use of Protected Material at trial.

13 **4. DURATION**

14 Even after final disposition of this litigation, the confidentiality
15 obligations imposed by this Order shall remain in effect until a Designating
16 Party agrees otherwise in writing or a court order otherwise directs. Final
17 disposition shall be deemed to be the later of (1) dismissal of all claims and
18 defenses in this Action, with or without prejudice; and (2) final judgment herein
19 after the completion and exhaustion of all appeals, rehearings, remands, trials, or
20 reviews of this Action, including the time limits for filing any motions or
21 applications for extension of time pursuant to applicable law.

22 **5. DESIGNATING PROTECTED MATERIAL**

23 5.1 Exercise of Restraint and Care in Designating Material for
24 Protection. Each Party or Non-Party that designates information or items for
25 protection under this Order must take care to limit any such designation to
26 specific material that qualifies under the appropriate standards. Mass,
27 indiscriminate, or routinized designations are prohibited.

28 If it comes to a Designating Party’s attention that information or items

1 that it designated for protection do not qualify for protection, the Designating
2 Party must promptly notify all other Parties that it is withdrawing the
3 inapplicable designation.

4 5.2 Manner and Timing of Designations. Except as otherwise provided
5 in this Order (see, e.g., second paragraph of section 5.2(a) below), or as
6 otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies
7 for protection under this Order must be clearly so designated before the material
8 is disclosed or produced.

9 Designation in conformity with this Order requires:

10 (a) for information in documentary form (e.g., paper or electronic
11 documents, but excluding transcripts of depositions or other pretrial or trial
12 proceedings), that the Producing Party affix at a minimum, the legend
13 “CONFIDENTIAL BUSINESS INFORMATION” (hereinafter
14 “CONFIDENTIAL legend”), to each page that contains protected material.

15 A Party or Non-Party that makes original documents available for
16 inspection need not designate them for protection until after the inspecting Party
17 has indicated which documents it would like copied and produced. During the
18 inspection and before the designation, all of the material made available for
19 inspection shall be deemed “CONFIDENTIAL BUSINESS INFORMATION.”
20 After the inspecting Party has identified the documents it wants copied
21 and produced, the Producing Party must determine which documents, or
22 portions thereof, qualify for protection under this Order. Then, before producing
23 the specified documents, the Producing Party must affix the “CONFIDENTIAL
24 legend” to each page that contains Protected Material.

25 (b) for testimony given in depositions that the Designating Party
26 identify the Disclosure or Discovery Material on the record, before the close of
27 the deposition all protected testimony, or in writing within ten (10) days of
28 receipt of the deposition transcript.

(c) for information produced in some form other than documentary and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information is stored the appropriate “CONFIDENTIAL legend.”

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating Party’s right to secure protection under this Order for such material. Upon timely correction of a designation, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of confidentiality at any time that is consistent with the Court’s Scheduling Order.

6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process under Local Rule 37.1 et seq.

6.3 The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn the confidentiality designation, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party’s designation until the Court rules on the challenge.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this Action only for prosecuting, defending, or attempting to settle this

1 Action. Such Protected Material may be disclosed only to the categories of
2 persons and under the conditions described in this Order. When the Action has
3 been terminated, a Receiving Party must comply with the provisions of section
4 13 below (FINAL DISPOSITION).

5 Protected Material must be stored and maintained by a Receiving Party at
6 a location and in a secure manner that ensures that access is limited to the
7 persons authorized under this Order.

8 7.2 Disclosure of “CONFIDENTIAL BUSINESS INFORMATION”.

9 Unless otherwise ordered by the court or permitted in writing by the
10 Designating Party, a Receiving Party may disclose any information or item
11 designated “CONFIDENTIAL BUSINESS INFORMATION” only to:

- 12 (a) the Receiving Party’s Counsel;
- 13 (b) Experts (as defined in this Order) of the Receiving Party to whom
14 disclosure is reasonably necessary for this Action, in accordance with the
15 procedures outlined in Section 7.3 below;
- 16 (c) the court and its personnel;
- 17 (d) court reporters and their staff;
- 18 (e) professional jury or trial consultants¹, and Professional Vendors to
19 whom disclosure is reasonably necessary for this Action and who have signed
20 the “Acknowledgment and Agreement to Be Bound” (Exhibit A);
- 21 (f) the author or recipient of a document containing the information or
22 a custodian or other person who has been shown to otherwise possess or know
23 the information; and

24 _____
25 ¹ The Parties disagree regarding the disclosure of CONFIDENTIAL
26 BUSINESS INFORMATION to mock jurors at this time. The Parties agree to
27 revisit the issue of mock juror access to CONFIDENTIAL BUSINESS
28 INFORMATION at a later phase in the litigation and stipulate that agreement to
this joint protective order is without prejudice to, and does not waive, any
Party’s right to raise the issue of mock juror access to CONFIDENTIAL
BUSINESS INFORMATION at a later time.

1 (g) any mediator or settlement officer, and their supporting personnel,
2 mutually agreed upon by any of the parties engaged in settlement discussions.

3 7.3 Expert Disclosure Procedure. For any proposed expert witness or
4 consultant described in paragraph 7.2(b), the party retaining the expert witness
5 or consultant shall provide written notice at least ten (10) calendar days before
6 the disclosure to the proposed expert or consultant of any CONFIDENTIAL
7 BUSINESS INFORMATION of a Designating Party, including a signed copy
8 of the “Acknowledgment and Agreement to Be Bound” (Exhibit A) along with
9 the *curriculum vitae* of the expert witness or consultant, the expert witness or
10 consultant’s business address, business title, business or profession, the
11 existence of any previous or current relationship (personal or professional) with
12 any of the parties or their competitors, and all companies for which the expert
13 witness or consultant has consulted, advised, been employed by, or been a
14 member of any advisory or governing body for, within the last four years. The
15 Designating Party shall have ten (10) calendar days after such notice to serve an
16 objection in writing to such a disclosure. No CONFIDENTIAL BUSINESS
17 INFORMATION shall be disclosed until after the expiration of the ten (10)
18 calendar day notice period. Upon receipt of a written objection, the party
19 retaining the expert witness or consultant shall then have five (5) business days
20 to respond to the objection. If the parties cannot come to an agreement, within
21 ten (10) business days after the expiration of the five (5) day response period,
22 the Designating Party may file an objection with the Court and seek
23 disqualification of the expert witness or consultant or other appropriate relief.
24 Failure to file an objection with the Court within the prescribed period shall
25 constitute a waiver of any objection to the expert witness or consultant and
26 CONFIDENTIAL BUSINESS INFORMATION may be thereafter disclosed to
27 the expert witness or consultant.

28 ///

1 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
2 **PRODUCED IN OTHER LITIGATION**

3 If a Party is served with a subpoena or a court order issued in other
4 litigation that compels disclosure of any Protected Material, that Party must:

5 (a) promptly notify in writing the Designating Party. Such notification
6 shall include a copy of the subpoena or court order;

7 (b) promptly notify in writing the party who caused the subpoena or
8 order to issue in the other litigation that some or all of the material covered by
9 the subpoena or order is subject to this Protective Order. Such notification shall
10 include a copy of this Stipulated Protective Order; and

11 (c) cooperate with respect to all reasonable procedures sought to be
12 pursued by the Designating Party whose Protected Material may be affected.

13 If the Designating Party timely seeks a protective order, the Party served
14 with the subpoena or court order shall not produce any Protected Material
15 before a determination by the court from which the subpoena or order issued,
16 unless the Party has obtained the Designating Party's permission. The
17 Designating Party shall bear the burden and expense of seeking protection in
18 that court of its confidential material and nothing in these provisions should be
19 construed as authorizing or encouraging a Receiving Party in this Action to
20 disobey a lawful directive from another court.

21 **9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE**
22 **PRODUCED IN THIS LITIGATION**

23 (a) The terms of this Order are applicable to information produced by a
24 Non-Party in this Action and designated as "CONFIDENTIAL BUSINESS
25 INFORMATION." Such information produced by Non-Parties in connection
26 with this litigation is protected by the remedies and relief provided by this
27 Order. Nothing in these provisions should be construed as prohibiting a Non-
28 Party from seeking additional protections.

1 (b) In the event that a Party is required, by a valid discovery request, to
2 produce a Non-Party's confidential information in its possession, and the Party
3 is subject to an agreement with the Non-Party not to produce the Non-
4 Party's confidential information, then the Party shall:

5 (1) promptly notify in writing the Requesting Party and the Non-
6 Party that some or all of the information requested is subject to a confidentiality
7 agreement with a Non-Party;

8 (2) promptly provide the Non-Party with a copy of the
9 Stipulated Protective Order in this Action, the relevant discovery request(s), and
10 a reasonably specific description of the information requested; and

11 (3) make the information requested available for inspection by
12 the Non-Party, if requested.

13 (c) If the Non-Party fails to seek a protective order from this court
14 within 14 days of receiving the notice and accompanying information, the
15 Receiving Party may produce the Non-Party's confidential information
16 responsive to the discovery request. If the Non-Party timely seeks a protective
17 order, the Receiving Party shall not produce any information in its possession or
18 control that is subject to the confidentiality agreement with the Non-Party before
19 a determination by the court. Absent a court order to the contrary, the Non-Party
20 shall bear the burden and expense of seeking protection in this court of its
21 Protected Material.

22 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

23 If a Receiving Party learns that, by inadvertence or otherwise, it has
24 disclosed Protected Material to any person or in any circumstance not
25 authorized under this Stipulated Protective Order, the Receiving Party must
26 immediately (a) notify in writing the Designating Party of the unauthorized
27 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
28 Protected Material, (c) inform the person or persons to whom unauthorized

disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the stipulated protective order submitted to the court.

12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order, no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

12.3 Filing Protected Material. A Party that seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. If a Party's request to file Protected

1 Material under seal is denied by the court, then the Receiving Party may file the
2 information in the public record unless otherwise instructed by the court.

3 **13. FINAL DISPOSITION**

4 After the final disposition of this Action, as defined in paragraph 4, within
5 60 days of a written request by the Designating Party, each Receiving Party
6 must return all Protected Material to the Producing Party or destroy such
7 material. As used in this subdivision, “all Protected Material” includes all
8 copies, abstracts, compilations, summaries, and any other format reproducing or
9 capturing any of the Protected Material. Whether the Protected Material is
10 returned or destroyed, the Receiving Party must submit a written certification to
11 the Producing Party (and, if not the same person or entity, to the Designating
12 Party) by the 60 day deadline that (1) identifies (by category, where appropriate)
13 all the Protected Material that was returned or destroyed and (2) affirms that the
14 Receiving Party has not retained any copies, abstracts, compilations, summaries
15 or any other format reproducing or capturing any of the Protected Material.
16 Notwithstanding this provision, Counsel are entitled to retain an archival copy
17 of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal
18 memoranda, correspondence, deposition and trial exhibits, expert reports,
19 attorney work product, and consultant and expert work product, even if such
20 materials contain Protected Material. Any such archival copies that contain or
21 constitute Protected Material remain subject to this Protective Order as set forth
22 in Section 4 (DURATION).

23 **14. VIOLATION**

24 Any violation of this Order may be punished by any and all appropriate
25 measures including, without limitation, contempt proceedings and/or monetary
26 sanctions.

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1 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

2 Dated: July 5, 2017

MICHELMAN & ROBINSON, LLP

3 By: /s/ Jan P. Weir

4 Jan P. Weir

Kathrine J. Brandt

5 Attorneys for Plaintiff

6 SPITZ TECHNOLOGIES

CORPORATION

7 Dated: July 5, 2017

8 KNOBBE, MARTENS, OLSON &
BEAR, LLP

9 By: /s/ John B. Sganga

10 John B. Sganga

11 Sheila N. Swaroop

Attorneys for Defendants

12 NOBEL BIO CARE USA, LLC,

13 NOBEL BIO CARE SERVICES,

14 AG and NOBEL BIO CARE AB

15 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

16
17 DATED: July 6, 2017

18 
Honorable Jay C. Gandhi

19 United States District/Magistrate Judge

1 **EXHIBIT A**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3 I, _____, of _____, declare
4 under penalty of perjury that I have read in its entirety and understand the
5 Stipulated Protective Order that was issued by the United States District Court
6 for the Central District of California on _____ in the case of *Spitz*
7 *Technologies Corp., v. Nobel Biocare USA LLC et al.*, Case No. 8:17-cv-00660-
8 JVS-JCG. I agree to comply with and to be bound by all the terms of this
9 Stipulated Protective Order and I understand and acknowledge that failure to so
10 comply could expose me to sanctions and punishment in the nature of contempt.
11 I solemnly promise that I will not disclose in any manner any information or
12 item that is subject to this Stipulated Protective Order to any person or entity
13 except in strict compliance with the provisions of this Order.

14 I further agree to submit to the jurisdiction of the United States District
15 Court for the Central District of California for the purpose of enforcing the
16 terms of this Stipulated Protective Order, even if such enforcement proceedings
17 occur after termination of this action. I hereby appoint _____
18 _____ of _____ as my California agent for service
19 of process in connection with this action or any proceedings related to
20 enforcement of this Stipulated Protective Order.

21
22 Date: _____

23 City and State where sworn and signed: _____

24 Printed name: _____

25 Signature: _____
26
27
28